

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

GN Docket No. 93-252

In the Matter of)
Implementation of Sections 3(n) and 332)
of the Communications Act)
Regulatory Treatment of Mobile Services)

To: The Commission

**REPLY COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads ("AAR"), by its undersigned counsel and pursuant to Section 1.45 of the Commission's Rules, hereby submits its Replies to Comments filed by other parties in the above-captioned proceeding. The Comments addressed the Notice of Proposed Rule Making that amended Section 3(n) and 332 of the Communications Act to create a comprehensive regulatory framework for all mobile radio services as required by the Omnibus Budget Reconciliation Act of 1993^{1/} (the "Budget Act").

The railroad industry is an extensive user of private land mobile radio services regulated under Part 90 of the Commission's rules. The services are used to safeguard life and property and to support efficient and reliable railroad operations. As a result of this extensive use, the railroad industry has a vital interest in the proceeding.

^{1/} Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

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Revised Section 332 of the Communications Act provides that a mobile service will be defined as commercial if the service (1) is "provided for profit" and (2) makes "interconnection service" available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." Conversely, if a mobile service does not satisfy these two criteria of a commercial mobile service or its functional equivalent, it will be classified as private mobile service.

Nearly every party commenting in this proceeding noted that the goal of the Budget Act is to eliminate disparate regulatory treatment of competing commercial mobile radio services and to bring them under a single regulatory structure.^{2/} Because the mobile services used by the railroad industry are for internal and not commercial purposes, they should continue to be classified as private mobile services.

**A. Mobile Radio Services Used for Internal Purposes
Should Be Classified as Private Mobile Radio Services**

The Commission has proposed that mobile radio systems that are operated by governments, non-profit public safety entities and businesses such as the railroads which use the systems solely for their own private operational communications would not be considered to be providing mobile radio services to customers

^{2/} Comments of Bell Atlantic Corporation (filed November 8, 1993) at 1; Comments of the Cellular Telephone Industry Association (filed November 8, 1993) at 2; Comments of the Utilities Telecommunications Council (filed November 8, 1993) at 2; and Comments of the American Mobile Telecommunications Association (filed November 8, 1993) at 4.

"for-profit." Accordingly, the service would be classified as a private mobile service, not a commercial one.

The railroad industry supports the Commission's proposed approach and notes that nearly every party that commented on this proposal, including cellular providers, potential PCS providers, local exchange carriers, regional Bell operating companies, Part 90 licensees, SMR and ESMR providers, and state regulators, supported the Commission's approach.^{3/}

B. Interconnection Alone Should Not Render a Service To Be Classified as a Commercial Mobile Service

The second element of the statutory definition of "commercial mobile service" requires that "interconnected service," (i.e., service that is "interconnected with the public switched network") be available to the public or a substantial portion of the public. As AAR noted in its comments, although some railroad mobile radio systems do permit interconnection with the public switched network, this fact alone should not render them "commercial" for purposes of the statute.

^{3/} See Comments of Vanguard Cellular (filed November 8, 1993) at 3; Comments of Telocator (filed November 8, 1993) at 8; Comments of Rochester Telephone (filed November 8, 1993) at 3; Comments of Southwestern Bell Corporation (filed November 8, 1993) at 5; Comments of UTC at 5; Comments of Nextel Communications, Inc. (filed November 8, 1993) at 8; and Comments of State of New York Department of Public Service (filed November 8, 1993) at 4.

As UTC, US West and others noted, the legislative history^{4/} of the Budget Act supports the conclusion that more than mere physical interconnection is required for a service to be classified as commercial: an "interconnected service" must be provided to a carrier's customers.^{5/} Indeed, the Commission should interpret the interconnection criterion as requiring not only that the mobile radio system be capable of interconnection, but also that the system operator provide interconnection service to paying subscribers.

C. Railroad Mobile Radio Communications Do Not Provide Services to a Substantial Portion or the Public

The railroad industry agrees with the Commission's approach that private land mobile radio services that are used by specific industries, businesses, or other user groups such as the railroads (pursuant to Part 90 of the Commission's rules), are not intended for use by the public or even a "substantial portion" of the public." AAR's support of the Commission's proposal is echoed by other users of private mobile services including UTC, ITA and AMTA.^{6/}

^{4/} Conference Report, H.R. Rep. No. 102-213, 103rd Cong., 1st Sess., 496 (1993).

^{5/} Comments of UTC 9; Comments of US West (filed November 8, 1993) at 16; Comments of Telocator at 9; and Comments of Nextel at 10.

^{6/} Comments of UTC at 11; Comments of Industrial Telecommunications Association (filed November 8, 1993) at 5; and Comments of AMTA at 12.

D. Conclusion

The railroads believe that their licensed mobile radio services under Part 90 of the Commission's rules should continue to be regulated as private radio services because they function primarily for safety purposes and for the internal support of railroad operations; they are not operated on a for-profit basis; and they do not provide public interconnection to the switched telephone network.

Respectfully submitted,

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November 23, 1993

CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, hereby certify that on this 23rd day of November, 1993, copy of the "Reply Comments of the Association of American Railroads" was served by first class United States mail, postage prepaid on the following parties:

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